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## MECHANICS' LIENS: 38-1-30 THROUGH 38-1-37

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### **38-1-30. Third-party contract -- Designated agent.**

- (1) The division shall contract in accordance with Title 63, Chapter 56, Utah Procurement Code, with a third party to establish and maintain the database for the purposes established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37.
- (2) (a) The third party under contract under this section is the division's designated agent, and shall develop and maintain a database from the information provided by:
- (i) local government entities issuing building permits;
  - (ii) original contractors;
  - (iii) subcontractors; and
  - (iv) other interested persons.
- (b) The database shall accommodate filings by third parties on behalf of clients.
- (c) The division and the designated agent shall design, develop, and test the database for full implementation on May 1, 2005.
- (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules and develop procedures for:
- (a) the division to oversee and enforce this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37;
  - (b) the designated agent to administer this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37; and
  - (c) the form of submission of an alternate filing, which may include procedures for rejecting an illegible or incomplete filing.
- (4) (a) The designated agent shall archive computer data files at least semiannually for auditing purposes.
- (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules to allow the designated agent to periodically archive projects from the database.
- (c) A project shall be archived no earlier than:
- (i) one year after the day on which a notice of completion is filed for a project;
  - (ii) if no notice of completion is filed, two years after the last filing activity for a project; or
  - (iii) one year after the day on which a filing is cancelled under Subsection 38-1-32(3)(c) or 38-1-33(2)(c).
- (d) The division may audit the designated agent's administration of the database as often as the division considers necessary.
- (5) The designated agent shall carry errors and omissions insurance in the amounts established by rule made by the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry into the database of information provided in alternate filings.
- (b) The designated agent shall meet or exceed standards established by the division for the accuracy of data entry for alternate filings.
- (7) The designated agent is not liable for the correctness of the information contained in an alternate filing it enters into the database.

*Amended by Chapter 297, 2006 General Session*

### **38-1-31. Building permit -- Construction -- Notice registry -- Notice of commencement of work.**

- (1) (a) (i) (A) For a construction project where a building permit is issued to an original contractor or owner-builder, within 15 days after the issuance of the building permit:
- (I) the local government entity issuing that building permit shall input the building permit application and transmit the building permit information to the database electronically by way of the Internet or computer modem or by any other means; and
  - (II) the original contractor or owner-builder may file a notice of commencement based on the building permit issued by the local government entity.
- (B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a notice of

commencement.

(ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is responsible for the accuracy of the information in the building permit.

(iii) For the purposes of classifying a record under Title 63, Chapter 2, Government Records Access and Management Act, building permit information transmitted from a local governmental entity to the database shall be classified in the database by the division notwithstanding the local governmental entity's classification of the building permit information.

(b) Within 15 days after commencement of physical construction work at the project site, the original contractor or owner-builder may file a notice of commencement with the database whether or not a building permit is issued or a notice of commencement is filed under Subsection (1)(a).

(c) An owner of construction or an original contractor may file a notice of commencement with the designated agent within the time prescribed by Subsections (1)(a) and (b).

(d) (i) If duplicate notices of commencement are filed, they shall be combined into one notice for each project and any notices filed relate back to the date of the earliest-filed notice of commencement for the project.

(ii) A duplicate notice of commencement that is untimely filed relates back under Subsection (1)(d)(i) if the earlier filed notice of commencement is timely filed.

(iii) Duplicate notices of commencement shall be automatically linked by the designated agent.

(e) The designated agent shall assign each construction project a unique project number that:

(i) identifies each construction project; and

(ii) can be associated with all notices of commencement, preliminary notices, and notices of completion.

(f) A notice of commencement is effective only as to any labor, service, equipment, and material furnished to the construction project that is furnished subsequent to the filing of the notice of commencement.

(2) (a) A notice of commencement shall include the following:

(i) the name and address of the owner of the project;

(ii) the name and address of the:

(A) original contractor; and

(B) surety providing any payment bond for the project, or if none exists, a statement that a payment bond was not required for the work being performed; and

(iii) (A) the project address if the project can be reasonably identified by an address; or

(B) the name and general description of the location of the project if the project cannot be reasonably identified by an address.

(b) A notice of commencement may include:

(i) a general description of the project; or

(ii) the lot or parcel number, and any subdivision, development, or other project name, of the real property upon which the project is to be constructed if the project is subject to mechanics' liens.

(c) A notice of commencement need not include all of the items listed in Subsection (2)(a) if:

(i) a building permit is issued for the project; and

(ii) all items listed in Subsection (2)(a) that are available on the building permit are included in the notice of commencement.

(3) If a notice of commencement for a construction project is not filed within the time set forth in Subsections (1)(a) and (b), the following do not apply:

(a) Section 38-1-32; and

(b) Section 38-1-33.

(4) (a) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notice of the filing of a notice of commencement or alternate notice as prescribed in Subsection (1), shall be provided to:

(i) all persons who have filed notices of commencement for the project; and

(ii) all interested persons who have requested notices concerning the project.

(b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:

(A) providing an e-mail address, mailing address, or telefax number to which a notice required by

Subsection (4)(a) is to be sent; and

(B) the accuracy of any e-mail address, mailing address, or telefax number to which notice is to be sent.

(ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it sends the notice to the e-mail address, mailing address, or telefax number provided to the designated agent whether or not the notice is actually received.

(5) (a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of commencement and prove that the notice of commencement is filed timely and meets all of the requirements in this section.

(b) A substantial inaccuracy in a notice of commencement renders the notice of commencement unenforceable.

(c) A person filing a notice of commencement by alternate filing is responsible for verifying and changing any incorrect information in the notice of commencement before the expiration of the time period during which the notice is required to be filed.

(6) At the time a building permit is obtained, each original contractor shall conspicuously post at the project site a copy of the building permit obtained for the project.

*Amended by Chapter 332, 2007 General Session*

### **38-1-32. Preliminary notice by subcontractor.**

(1) (a) (i) Except for a person who has a contract with an owner or an owner-builder or a laborer compensated with wages, a subcontractor shall file a preliminary notice with the database within the later of:

(A) 20 days after commencement of its own work or the commencement of furnishing labor, service, equipment, and material to a construction project; or

(B) 20 days after the filing of a notice of commencement.

(ii) A preliminary notice filed within the period described in Subsection (1)(a)(i) is effective as to all labor, service, equipment, and material furnished to the construction project, including labor, service, equipment, and material provided to more than one contractor or subcontractor.

(iii) (A) If more than one notice of commencement is filed for a project, a person may attach a preliminary notice to any of the notices of commencement filed for the project.

(B) A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement for the project to which the preliminary notice may attach.

(b) If a person files a preliminary notice after the period prescribed by Subsection (1)(a), the preliminary notice becomes effective five days after the day on which the preliminary notice is filed.

(c) Except as provided in Subsection (1)(e), failure to file a preliminary notice within the period required by Subsection (1)(a) precludes a person from maintaining any claim for compensation earned for performance of labor or service or supply of materials or equipment furnished to the construction project before the expiration of five days after the late filing of a preliminary notice, except as against the person with whom the person contracted.

(d) (i) (A) If a person who is required to file a preliminary notice under this chapter fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

(B) A county recorder need not verify that a valid preliminary notice is filed when a person files a notice to hold and claim a lien under Section 38-1-7.

(ii) The content of a preliminary notice shall include:

(A) the building permit number for the project, or the number assigned to the project by the designated agent;

(B) the name, address, and telephone number of the person furnishing the labor, service, equipment, or material;

(C) the name and address of the person who contracted with the claimant for the furnishing of the labor, service, equipment, or material;

(D) the name of the record or reputed owner of the project;

(E) the name of the original contractor under which the claimant is performing or will perform its

work; and

(F) the address of the project or a description of the location of the project.

(iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor shall provide the person with the building permit number for the project, or the number assigned to the project by the designated agent.

(e) If a person provides labor, service, equipment, or material before the filing of a notice of commencement and the notice of commencement is filed more than 15 days after the day on which the person providing labor, service, equipment, or material begins work on the project, the person providing labor, service, equipment, or material need not file a preliminary notice to maintain the person's right to hold a lien under this chapter or any other right, including a right referenced under Subsection (1)(c).

(2) (a) (i) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notification of the filing of a preliminary notice or alternate notice as prescribed in Subsection (1), shall be provided to:

(A) the person filing the preliminary notice;

(B) each person that filed a notice of commencement for the project; and

(C) all interested persons who have requested notices concerning the project.

(ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible for:

(A) providing an e-mail address, mailing address, or telefax number to which a notice required by Subsection (2)(a) is to be sent; and

(B) the accuracy of any e-mail address, mailing address, or telefax number to which notice is to be sent.

(iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it sends the notice to the e-mail address, mailing address, or telefax number provided to the designated agent whether or not the notice is actually received.

(b) The burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.

(c) Subject to Subsection (1)(d), a person required by this section to give preliminary notice is only required to give one notice for each project.

(d) If the labor, service, equipment, or material is furnished pursuant to contracts under more than one original contract, the notice requirements must be met with respect to the labor, service, equipment, or material furnished under each original contract.

(3) (a) If a construction project owner, original contractor, subcontractor, or other interested person believes that a preliminary notice has been filed erroneously, that owner, original contractor, subcontractor, or other interested person can request from the person who filed the preliminary notice evidence establishing the validity of the preliminary notice.

(b) Within ten days after the request described in Subsection (3)(a), the person or entity that filed the preliminary notice shall provide the requesting person or entity proof that the preliminary notice is valid.

(c) If the person or entity that filed the preliminary notice does not provide proof of the validity of the preliminary notice, that person or entity shall immediately cancel the preliminary notice from the database in any manner prescribed by the division pursuant to rule.

(4) A person filing a preliminary notice by alternate filing is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the notice is required to be filed.

(5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

*Amended by Chapter 332, 2007 General Session*

### **38-1-33. Notice of completion.**

(1) (a) Upon final completion of a construction project:

(i) an owner of a construction project or an original contractor may file a notice of completion with the database; and

(ii) a lender that has provided financing for the construction project, a surety that has provided bonding

for the construction project, or a title company issuing a title insurance policy on the construction project, may file a notice of completion.

(b) Notwithstanding Section 38-1-2, if a subcontractor performs substantial work after the applicable dates established by Subsections (1)(a)(i) and (ii), that subcontractor's subcontract is considered an original contract for the sole purpose of determining:

(i) the subcontractor's time frame to file a notice to hold and claim a lien under Subsection 38-1-7(1); and

(ii) the original contractor's time frame to file a notice to hold and claim a lien under Subsection 38-1-7(1) for that subcontractor's work.

(c) A notice of completion shall include:

(i) the building permit number for the project, or the number assigned to the project by the designated agent;

(ii) the name, address, and telephone number of the person filing the notice of completion;

(iii) the name of the original contractor for the project;

(iv) the address of the project or a description of the location of the project;

(v) the date on which final completion is alleged to have occurred; and

(vi) the method used to determine final completion.

(d) For purposes of this section, final completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of the work.

(e) (i) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notification of the filing of a notice of completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

(A) each person that filed a notice of commencement for the project;

(B) each person that filed preliminary notice for the project; and

(C) all interested persons who have requested notices concerning the project.

(ii) A person to whom notice is required under this Subsection (1) (e) is responsible for:

(A) providing an e-mail address, mailing address, or telefax number to which a notice required by this Subsection (1)(e) is to be sent; and

(B) the accuracy of any e-mail address, mailing address, or telefax number to which notice is to be sent.

(iii) The designated agent fulfills the notice requirement of Subsection (1) (e)(i) when it sends the notice to the e-mail address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(iv) Upon the filing of a notice of completion, the time periods for filing preliminary notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed subsequent to the notice of completion and within ten days from the day on which the notice of completion is filed.

(f) A subcontract that is considered an original contract for purposes of this section does not create a requirement for an additional preliminary notice if a preliminary notice has already been given for the labor, service, equipment, and material furnished to the subcontractor who performs substantial work.

(2) (a) If a construction project owner, original contractor, subcontractor, or other interested person believes that a notice of completion has been filed erroneously, that owner, original contractor, subcontractor, or other interested person can request from the person who filed the notice of completion evidence establishing the validity of the notice of completion.

(b) Within ten days after the request described in Subsection (2)(a), the person who filed the notice of completion shall provide the requesting person proof that the notice of completion is valid.

(c) If the person that filed the notice of completion does not provide proof of the validity of the notice of completion, that person shall immediately cancel the notice of completion from the database in any manner prescribed by the division pursuant to rule.

(3) A person filing a notice of completion by alternate filing is responsible for verifying and changing any incorrect information in the notice of completion before the expiration of the time period during which the notice is required to be filed.

*Amended by Chapter 332, 2007 General Session*

**38-1-34. Abuse of database -- Penalty.**

- (1) A person abuses the database if that person records a notice in the database:
  - (a) without a good faith basis for doing so;
  - (b) with the intent to exact more than is due from the project owner or any other interested party; or
  - (c) to procure an unjustified advantage or benefit.
- (2) A person who violates Subsection (1) is liable to the owner of the construction project, an original contractor, a subcontractor, or any interested party who is affected by the notice for twice the amount of the actual damages incurred by such party or \$2,000, whichever is greater.

*Enacted by Chapter 250, 2004 General Session*

**38-1-35. Limitation of liability.**

- (1) The state and the state's agencies, instrumentalities, political subdivisions, and an employee of a governmental entity are immune from suit for any injury resulting from the state construction registry.
- (2) The designated agent and its principals, agents, and employees are not liable to any person for the accuracy, coherence, suitability, completeness, or legal effectiveness of information filed or searched in the database if the designated agent:
  - (a) develops and maintains the database in compliance with reliability, availability, and security standards established by the division; and
  - (b) meets data entry accuracy standards established by the division under Subsection 38-1-30(6)(b).
- (3) The designated agent and its principals, agents, and employees are not liable for their inability to perform obligations under this chapter to the extent performance of those obligations is prevented by:
  - (a) an act of God;
  - (b) a fire;
  - (c) a storm;
  - (d) an earthquake;
  - (e) an accident;
  - (f) governmental interference; or
  - (g) any other event or cause beyond the designated agent's control.

*Amended by Chapter 297, 2006 General Session*

**38-1-36. Construction notice does not impart notice.**

The filing of a document in the database is not intended to give notice to all persons of the content of the document within the meaning of Section 57-3-102 and does not constitute constructive notice of matters relating to real property to purchasers for value and without knowledge.

*Enacted by Chapter 250, 2004 General Session*

**38-1-37. Application of Section 38-1-27 and Sections 38-1-30 through 38-1-36.**

- (1) Except as provided in Subsection (3), Section 38-1-27 and Sections 38-1-30 through 38-1-36 in effect as of May 1, 2005 shall apply to construction projects for which a notice of commencement is filed on or after May 1, 2005.
- (2) A construction project for which a notice of commencement is filed before May 1, 2005 is subject to the provisions of this chapter in effect prior to May 1, 2005.
- (3) (a) Section 38-1-27 and Sections 38-1-30 through 38-1-36 in effect as of May 1, 2005, shall apply to a construction project for which a notice of commencement is filed on or after November 1, 2005 involving a residence, as defined in Subsection 38-11-102(22).
  - (b) For a construction project for which a notice of commencement is filed before November 1, 2005 involving a residence, as defined in Subsection 38-11-102(22), the law in effect on April 30, 2005 shall govern.

*Amended by Chapter 64, 2005 General Session*